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ESPERANZA CENTER FOR LAW & ADVOCACY

Testimony in Support of S.B. 427

Senator Coleman, Representative Tong and Members of the Judiciary Committee, we write to you on behalf of Esperanza Center for Law & Advocacy, a low-bono law firm that is at the forefront of representing the most vulnerable members of Connecticut's immigrant community, including asylum seekers, immigrants in detention and undocumented immigrant juveniles. We take the present opportunity to testify **in support of** S.B. 427, a legislative proposal that would open up the possibility for immigrant juveniles between the ages of 18 to 21 years old to apply for the federal immigration benefit known as the "Special Immigrant Juvenile Visa." This is a right under federal immigration law that is currently foreclosed to post-eighteen-year-old immigrant juveniles residing in our state by legal precedent that limits abandonment, abuse and neglect proceedings to cases involving youth under 18 years of age.

The last few years have borne witness to historic levels of child migrants arriving at the U.S. border, often unaccompanied by their parents or a competent caregiver, and just as often, on the heels of a harrowing international journey. These children have been driven to our border by persecution, abandonment, deep deprivation, exploitation and violence that has overwhelmed their communities. Child migrants are coming in great numbers from the "Northern Triangle" countries of Guatemala, Honduras and El Salvador, which have some of the highest rates of violence and murder in the world. That these same countries lack basic legal protections for these children renders their international displacement a critical human rights issue that compels policy makers in the U.S. to enact measures to safeguard their wellbeing.

To this end, the federal government enacted the legal protection known as "Special Immigrant Juvenile Status" ("SIJ status") in order to provide humanitarian protection to the distinctly vulnerable population of undocumented children who have suffered abuse, neglect or abandonment by one or both of their parents.[1] The rather complicated statutory scheme underlying SIJ status encompasses multiple provisions of the federal immigration statute and the relevant federal implementing regulations.[2]

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[1] Meghan Johnson & Yasmin Yavar, "Uneven Access to Special Immigration Juvenile Status: How the Nebraska Supreme Court Became an Immigration Gatekeeper," p. 71.
[2] The Immigration Act of 1990, Pub. L. No. 101-649, § 153(a), 104 Stat. 4978 (1990) is the original statute providing Special Immigrant Juvenile relief to immigrant juveniles who had been declared dependent on a state court, deemed eligible for long-term foster care and for whom the court had determined that it was in their best interest no to return to their respective home countries. The statute has been amended twice in the

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The starting point is INA § 203(b)(4), which allocates a limited number of immigrant visas, or lawful permanent residency, to individuals who obtain classification as "Special Immigrant" as defined in INA § 101(a)(27). The term "Special Immigrant Juvenile," as one subset of "Special Immigrant," is set forth in INA § 101(a)(27)(J) and provides for various requirements, *inter alia*: (1) a judicial determination pursuant to relevant state law regarding the custody and care of the immigrant juvenile as set forth in INA § 101(a)(27)(J)(i); (2) a factual determination regarding the viability of the immigrant juvenile's reunification with one or both parents due to abandonment, abuse or neglect, as set forth in INA § 101(a)(27)(J)(i); as well as (3) a best interest determination regarding the potential return of the immigrant juvenile to his/her home country, as set forth in INA § 101(a)(27)(J)(ii).

Congress devised a procedure requiring the collaboration of state and federal institutions with the specific intent of protecting the proposed class of immigrant juveniles and providing for their safety and welfare.[3] The state courts have been tasked with issuing the requisite special findings in bona fide cases because of their special expertise in making determinations about the welfare of juveniles.[4] Once the state court issues the SIJ-predicate order, the immigrant juvenile has the opportunity to petition the federal immigration agency, U.S. Citizenship and Immigration Services ("USCIS"), for classification as a "Special Immigrant Juvenile" pursuant to INA § 203(b)(4) within the meaning of INA § 101(a)(27)(J), and thereafter, apply to adjust his/her immigration status to that of a "lawful permanent resident" pursuant to INA § 245(a).

The federal implementing regulations at 8 C.F.R. § 204.11(c)(1) limit SIJ classification to immigrants who are "under twenty one years of age." The age limitation for Special Immigrant Juveniles corresponds with the definition of "Child" under INA § 101(b)(1), which refers to an "unmarried person under twenty-one years of age" and serves a limiting function vís-a-vís certain immigration benefits that are based on family

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intervening period. In 1997, Congress clarified that SIJ status was intended to benefit only those immigrant juveniles who could demonstrate that they had suffered abuse, neglect and abandonment. Departments of Commerce, Justice and State, the Judiciary and Related Agencies Appropriations Act, 1998, Pub. L. No. 105 – 119, § 113, 111 Stat. 2440 (1997). Most recently, the TVPRA broadened eligibility for SIJ status by replacing the requirement of eligibility for long-term foster care with a requirement that a juvenile's reunification with one or both parents is not viable due to abuse, abandonment, neglect, or a similar basis under state law. The relevant federal regulations have not been updated to implement the 2008 amendments. Therefore, reference to and discussion about the prevailing federal regulations on SIJ classification at 8 C.F.R. § 204.11 are made in light of the TVPRA's amendments to the SIJ statute.

[3] Johnson and Yavar, *supra* note 19, at 75.

[4] *Id.*

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relationship. While Congress has established a bright-line rule regarding age eligibility for SIJ status, the reliance on state courts to issue predicate orders has been troublesome in practice and has resulted in "uneven access"[5] to classification as a "Special Immigrant Juvenile" across the states based on age. Indeed, Connecticut is one of the states that has limited the class of immigrant juveniles eligible for SIJ classification based on age owing to the holding in the companion cases *In Re Jose B.*, 34 A.3d 975 (Conn. 2012) and *In Re Jessica M.*, 35 A.3d 1072 (Conn. 2012), which renders juvenile proceedings "moot" for individuals who have reached the "age of majority" in Connecticut.

While logical with respect to legal matters pertaining exclusively to state-law relief, the holding in *In re Jessica M.*, in particular, raises constitutional questions regarding the supremacy of federal law, given that the neglect petition in that case was initiated by a Petitioner who requested the SIJ predicate findings. The Superior Court of New Jersey, Appellate Division took up this constitutional issue just recently in *O.Y.P.C. v. J.C.P* ___ (2015), when reviewing a trial court's denial of a custody petition that sought the predicate findings for SIJ classification on the grounds that the subject of the petition had already turned eighteen. The Superior Court held that denying the custody petition on the basis of how New Jersey law defines the term "juvenile" was an *ultra vires* action that defied Congress's intent to make SIJ status available to a larger class by fixing the upper age limit at twenty-one years old.

In reaching its holding, the Superior Court cited lengthy *dicta* from another SIJ-related case, *H.S.P. v. J.K.*, ___(2015), in which the New Jersey Supreme Court underscored that Congress has specifically delegated the advisory function to state courts because their specialized knowledge regarding the best interest of children makes those courts better equipped than the federal immigration agency to render the judicial determinations required by INA § 101(a)(27)(J)(i)-(ii) and the federal implementing regulations at 8 C.F.R. § 204.11(a). The New Jersey Supreme Court clarified that the role of the state courts is not to grant or deny immigration relief, nor is it to interpret federal immigration statutes when adjudicating state court actions where SIJ findings have been requested. To apply state law in a way that forecloses relief to an immigrant juvenile, such as by declining to hear cases of post-eighteen-year-olds, would "defeat the purpose of the hybrid federal-state scheme Congress created." *Id.*, 6. What is more, by improperly applying state law, or misinterpreting federal law when adjudicating SIJ-related cases,

[5] *Id.*

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the state courts risk functioning as "immigration gatekeepers," [6] unnecessarily depriving individuals of their rights to access federal benefits, and thereby, creating disparity across the states. Such consequences contradict the explicit intent of the TVPRA for state court proceedings to serve as a vehicle for SIJ classification for *all* eligible class members.

The fact that the Connecticut Supreme Court failed to address the supremacy of law issue in *In re Jessica M.* does not mean that this fundamental constitutional principle is in any way irrelevant or immaterial to current or future SIJ cases arising in Connecticut.[7] While there remains the possibility to address this issue through litigation, taking legislative action by enacting S.B. 427 is by far the more efficient and expedient solution. In fact, similar legislation has been successfully implemented in New York and Massachusetts, thereby giving full realization to the class of intended beneficiaries in our neighboring states.

As a policy matter, the provisions of the proposed legislation serve the public interest, given that lawful immigration status generally correlates with an improved quality of life in terms of socioeconomic gain and broader access to medical care and mental health services. [8] Obtaining legal immigration status is particularly crucial for eighteen-to-twenty-one-year-olds, who have suffered child abuse, abandonment and/or neglect and have more acute mental health needs as a consequence. For them, access to adequate behavioral and mental health care could drastically improve the trajectory of their young lives, which has real-world positive consequences for the communities in which they live. In fact, a public policy position advocating for improved access of emerging adults to behavioral health services is in line with recommendations proposed by

[6] Meghan Johnson and Kele Steward, "Unequal Access to Special Immigrant Juvenile Status: State Court Adjudication of One-Parent Cases," American Bar Association, July 14, 2014 (contending that certain state courts have more narrowly interpreted the federal law governing the SIJ process in the face of a more literal reading of the statutory language is an improper overreach of the court's delegated authority and reflects underlying concerns about opening the floodgates to immigrant juveniles.)

[7] In fact, the Court of Special Appeals of Maryland has already ruled that the provisions of the immigration law that direct courts to enter factual findings for SIJ purposes is a permissible delegation of power to the state courts by the federal government pursuant to the Supremacy Clause of the U.S. Constitution, Article VI. *Simbaina v. Bunay*, Ct. Sp. App. No. 01092 (Feb. 3, 2015).

[8] Jennifer Baum et al., Most in Need But Least Served: Legal and Practical Barriers to Special Immigrant Juvenile Status for Federally Detained Minors, 50 FAM. CT. REV. 621, 623 (2012).

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the Connecticut Task Force to Study the Provision of Behavioral Health Services to Young Adults in its 2014 Final Report. [9]

Esperanza's support for SB 427 is rooted above all in the close relationships we have formed with our young clients, who have turned to us to defend them from deportation to the countries they have scarcely escaped. These children have shared with us intimate and painful details about the trauma they have endured in their home countries and their sorrow for the loved ones who they have been forced to leave behind. It is their conviction that this country will provide them with greater safety and a drastically improved quality of life that emboldens us to defend their rights and advocate for broader application of laws that will safeguard their welfare.

For these reasons, Esperanza Center for Law & Advocacy fully supports the enactment of S.B. 427.

Sincerely,

Yazmin Rodriguez, Esq.

Danielle L. Robinson Briand, Esq.

[9] Final Report of The Task Force to Study the Provision of Behavioral Health Services to Young Adults, April 2014. Accessed at: www.cga.ct.gov/ph/tfs/20130701_Task%20Force%20to%20Study%20The%20Provisions%20of%20Behavioral%20Health%20Services%20For%20Young%20Adults/Final%20Report%20for%20the%20Task%20Force%20to%20Study%20the%20Provision%20of%20Behavioral%20Health%20Services%20for%20Young%20Adults.pdf

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